Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	

PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

Verizon Wireless, pursuant to 47 C.F.R. § 1.429, respectfully seeks reconsideration and/or clarification of the *Report and Order* ("*Order*") in the captioned proceeding.[1] Although Verizon Wireless generally supports the Commission's actions in this docket, Verizon Wireless submits this petition on certain narrow grounds.

In the *Order*, the Commission established a national do-not-call registry to complement a plan for a single national do-not-call database adopted by the Federal Trade Commission ("FTC"). The Commission also approved certain other measures designed to regulate telemarketing, including restrictions related to the use of autodialers, abandoned calls, and Caller ID. With respect to wireless telemarketing, the Commission interpreted the Telephone Consumer Protection Act of 1991 ("TCPA")[2] to permit

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[1] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Report and Order,* CG Docket No. 02-278, FCC No. 03-153 (released July 3, 2003), *summarized,* 68 Fed. Reg. 44144 (Jul. 25, 2003).

[2] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

wireless subscribers to register their wireless numbers with the national do-not-call program.[3]

While Verizon Wireless supports the Commission's effort to protect wireless subscribers from unwanted telemarketing calls, Verizon Wireless seeks reconsideration and/or clarification of certain new requirements. As demonstrated below, the Commission should: (1) clarify that telemarketers are prohibited from using autodialed or artificial or prerecorded voice messages to call wireless subscribers ported from wireline carriers; (2) reconsider the requirement for carriers to use legal entity names when they send prerecorded messages to customers; and (3) clarify that carriers can use bill messages to notify subscribers of the availability of the national "do-not-call" registry.

I. The Commission Should Clarify Its Rules Related to Telemarketing to Numbers Ported Between Wireless And Wireline Carriers

The TCPA makes it unlawful to make calls using autodialers and artificial or prerecorded voice messages "to any telephone number *assigned* to…cellular telephone service [and other wireless services]."[4] The Commission failed to clarify that telemarketers using these types of systems cannot call customers that port their numbers from wireline to wireless carriers. The Commission determined that telemarketers have in the past had to identify wireless numbers to comply with the TCPA, and that these types of solutions are likely to be available to promote future compliance.[5]

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3 *Order* ¶ 33.

4 47 U.S.C. § 227(b)(1)(A)(iii) (emphasis added).

5 *Order* ¶ 169.

Regardless of whether there are or will be technical ways for telemarketers to identify wireless numbers,[6] the more fundamental problem that the FCC failed to address is whether a number should be treated as "*assigned to*" a wireless service based on whether it is currently associated with a customer using it for wireless service or whether it was initially ported from a wireless service provider.[7] For example, when a landline customer ports his or her service to a wireless service provider, it is not clear from the Commission's rules whether telemarketers could still use autodialed and artificial and prerecorded calls to solicit this customer, now on a wireless rate plan, without violating the TCPA.

Complicating this issue is how the Commission requires carriers to report their telephone number utilization. According to numbering guidelines and the Commission's rules, numbers ported to another carrier are treated as "assigned numbers" that are reported to the Commission for utilization purposes by the donating carrier, not the receiving carrier.[8] Thus, for purposes of numbering and local number portability, a number that is ported to another carrier is still assigned to the original carrier.

The Commission should clarify whether a number is assigned to a wireless service based on the identity of a customer's original carrier or the new service. As Verizon Wireless stated in its original comments, telemarketers should be prohibited from calling

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[6] As CTIA set forth in its comments, it is irrelevant how a telemarketer technically identifies a wireless number because the statute imposes liability on the telemarketer violating the provision regardless of whether there are technologies in place to avoid the violation. The alternative is for the telemarketer not to call. CTIA Comments at 4-5.

[7] *See* Cingular Comments at 9 (pooling and porting will make it more difficult to differentiate between wireline and wireless numbers).

wireless handsets using autodialers or artificial or prerecorded voices because such calls could be disruptive and potentially hazardous, and because wireless customers are typically charged for incoming calls, either on a per-minute or per-call basis or as a reduction in their bucket of minutes.[9] Without clear guidelines on what constitutes calls to numbers assigned to wireless service, it is likely that wireless customers who have ported from wireline carriers will receive autodialed or artificial or prerecorded voice calls, causing customer confusion and complaints.

II. The Commission Should Reconsider The Requirement For Carriers to Identify The Legal Entity Responsible For Prerecorded Messages

The Commission amended its rules in the *Order* to require all prerecorded messages to identify the name and telephone number of the business responsible for generating the message.[10] Although the Commission permitted businesses to use the "doing business as" ("d/b/a") name they use to market, the Commission required businesses to state the legal name under which the business is registered to operate.[11]

The Commission should reconsider the requirement for businesses to use their legal name to identify themselves when they generate prerecorded messages. Given the complex and often shared ownership structure in the wireless industry, this requirement would create customer confusion. For example, Cellco Partnership d/b/a Verizon Wireless is the Delaware general partnership under which Verizon Wireless conducts

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[8] Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking,* 15 FCC Rcd 7574, 7585-86 (¶ 18) (2000).

[9] Verizon Wireless Comments at 11.

[10] *Order* ¶ 144.

[11] *Id.*

business. Customers in most cases are not familiar with Cellco Partnership, nor in some cases may they know what d/b/a means.

Cellco Partnership is also frequently not the legal entity that is operating a license in a market. Verizon Wireless has well over 500 licenses throughout the United States, and customers would in most cases be completely unfamiliar with the names of the legal entities operating these licenses, which include CyberTel Cellular Telephone Company, Gold Creek Cellular of Montana Limited Partnership, Illinois SMSA Limited Partnership, and New Par, just to name a few.

It is also unclear how the Commission's requirement that businesses use the name of the company under which they are "registered to do business" in a state would apply to wireless industry partnerships. There are very few states in which general partnerships can register to do business. Most states do not recognize general partnerships and therefore do not allow registration at all. There are also many state regulatory commissions that do not require wireless carriers to register with the state commission.

Verizon Wireless appreciates that it might be difficult in some cases to identify marketers, but the requirement for businesses to provide legal entity names will not necessarily resolve this problem. Given that this requirement would be potentially confusing to customers, the Commission should instead permit companies to identify themselves by their d/b/a names only in prerecorded messages, but also require businesses to provide their legal entity information upon request.

III. The Commission Should Clarify That Carriers Can Use Bill Messages to Satisfy The Annual Notice Requirement

When the Commission decides as in this case to adopt a single national "do-not-call" database, the TCPA requires the Commission to adopt a requirement for common

carriers providing telephone exchange service to notify their subscribers of the opportunity to enroll in the national "do-not-call" database.[12] The *Order* requires this notice to be provided via a bill insert.[13]

The Commission should clarify that bill messages are "bill inserts" for purposes of compliance with the TCPA notice requirement. Carriers use bill messages on a monthly basis to communicate with their customers because they are an efficient alternative to adding separate pages to bills. Verizon Wireless seeks to avoid the need for additional pages in a variety of ways, including a popular online billing option.[14] The Commission should clarify that bill messages are sufficient for purposes of compliance with the TCPA.

CONCLUSION

For foregoing reasons, the Commission should clarify and/or reconsider its rules related to TCPA compliance for calls to wireless subscribers porting from wireline

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[12] 47 U.S.C. § 227(C)(3)(B)-(C). Wireless carriers like Verizon Wireless provide telephone exchange service. *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order,* 11 FCC Rcd 15499 ¶ 1012 (1996).

[13] *Order* ¶ 56.

[14] Bill inserts do not automatically appear on online bills, and because Verizon Wireless does not send paper bills to these customers, the requirement to notify customers in bill inserts would require additional work to make the bill inserts available to customers who pay their bills online.

carriers, legal entity identification, and the bill insert requirement for annual notice of the availability of the national "do-not-call" list.

Respectfully submitted,

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